

B. Facilities-Based CLECs Will Be Impaired Without Unbundled Access to High Capacity Loops

None of the “marketplace developments” cited or make-weight arguments presented in the RBOC Petition demonstrate that the Commission’s UNE Remand conclusions with respect to unbundling loops (high capacity or any other kind) remain any less valid today than they were when they were adopted. Facilities-based CLECs will be impaired without access to high capacity UNE loops. The cost and delay associated with self-provisioning and the lack of ubiquity/availability of third-party loop alternatives remain the most critical reasons why self-provisioning and third-party sources do not provide adequate alternatives to UNE loops. Despite the RBOCs’ contentions to the contrary, the FCC’s *UNE Remand* conclusions remain sound.

1. The RBOCs Fail to Demonstrate that Alternatives to High Capacity UNE Loops Are Available With Ubiquity Comparable to that of Their Own Networks

The RBOCs’ argument that the Commission was “mistaken” when it concluded that CLECs would be impaired without access to UNE loops in the absence of ubiquitously available alternatives is entirely without merit.³⁸ Like the Act’s unbundling obligations, this conclusion applies with equal force to facilities used for residential and business services. Neither the Act nor the Commission’s rules make a distinction based on the service to be provided over UNE loops or the customers to which such facilities are directed. Moreover, the Commission has given no indication that economic self-provisioning and wholesale alternatives for high capacity loops

RBOCs surely would have included evidence of their need to respond to it with dramatic reductions in the price of their special access services.

³⁸ See *supra* n.29.

must be available with any less “ubiquity” than for POTS loops. Indeed, the RBOCs’ assertion that the Commission misunderstood its own analytical criterion is disingenuous.

Nevertheless, the RBOCs fail to demonstrate that CLECs would not be impaired without access to UNE loops. Instead, they supply figures intended to demonstrate that “customers of special access and other high capacity services are overwhelmingly large businesses located in limited geographic areas.”³⁹ Although members of the CLEC Coalition are working to change that by bringing high capacity services to small to medium (as well as large) businesses located in diverse geographic areas, it is not at all clear what relevance such figures have with regard to determining whether or not CLECs would be impaired without access to high capacity UNE loops.

Indeed, figures that represent the concentration of RBOC special access revenues in a relatively small percentage of their total number of wire centers provide little or no insight as to the ability of CLECs to self-provision high capacity loops. For example, the Petition claims that 80 percent of SBC’s special access revenues come from 20 percent of its wire centers. It says nothing about how CLECs are supposed to efficiently replicate SBC’s high capacity loop plant deployed across the country in the huge number of wire centers that represents 20 percent of SBC’s coast-to-coast total. Not one of the facilities-based members of the CLEC Coalition could accomplish such a feat – nor could they do so as a group (at least not in the foreseeable future).

³⁹ RBOC Petition at 11, n.24.

The RBOCs claim that, given the concentration of their own special access revenues, CLEC self-provisioning is “eminently rational” and “readily achievable”.⁴⁰ If this were true, this group of CLECs surely would not be devoting precious resources to these comments. Indeed, the cases in which self-provisioning high capacity loops economically can be justified (or justified to investors) are severely limited.⁴¹

The attached affidavit prepared by KMC delivers more proof. Indeed, of all the commercial buildings addressable (within 1200 feet) of KMC’s 34 city fiber ring network

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Still more proof is supplied in the attached affidavit prepared by Cbeyond. As Cbeyond explains, Cbeyond looked for alternative high capacity loop suppliers in the Atlanta market and found that none could offer a ubiquitous or cost effective alternative to BellSouth’s high capacity UNE loops.⁴³ After investigating alternative providers, Cbeyond determined that “[a]s a practical matter, Cbeyond does not have any alternative to BellSouth for high capacity loops.”⁴⁴ The few

⁴⁰ RBOC Petition at 11.

⁴¹ Affidavit of Jerry L. Weikle (CTC Exchange), ¶ 6 (“Weikle Aff.”); *see* Affidavit of Brian L. Butler (NuVox), ¶ 8 (NuVox’s business plan generally does not contemplate self-deployment of high capacity loop facilities) (“Butler Aff.”).

⁴² Affidavit of Michael P. Duke (KMC), ¶¶ 4-7 (“Duke Aff.”).

⁴³ Affidavit of James T. Markle (Cbeyond), ¶¶ 5-6 (“Markle Aff.”).

⁴⁴ *Id.*, ¶ 6.

alternative high capacity loop providers in the Atlanta area serve only a limited number of high-rise buildings where Cbeyond's small business DS-1 customers are not located.⁴⁵

NuVox's search for third party alternatives reached much the same result.⁴⁶ NuVox reports that it does not obtain high capacity loop facilities from third-party providers in any of its 30 markets.⁴⁷ As explained in the attached affidavit prepared by NuVox:

Our experience has been that third-party providers do not offer a viable source of HiCap loop facilities. To the extent third-party providers have deployed any HiCap loop facilities in our markets, these facilities generally are in the form of fiber-rings with limited geographic coverage (i.e., connected to a limited number of multi-tenant buildings), which is not compatible with NuVox's approach of offering service on a ubiquitous basis throughout a metropolitan area. Moreover, even within their limited geographic coverage, the availability of facilities from third-party providers is speculative at best -- i.e., generally NuVox is not aware of third-party providers actively offering HiCap loop facilities on an unbundled, wholesale basis.⁴⁸

As explained in the attached affidavit prepared by CTC Exchange, CTC Exchange also reports that alternative providers of high capacity loops are practically non-existent in its service areas.⁴⁹

Notably, the RBOC Petition does not even attempt to demonstrate that a vibrant wholesale market has developed for high capacity loops. Instead, the RBOCs hash together snippets from various sources to demonstrate that CLECs claim to be able to connect their networks to office buildings, office parks, and various other places where customers in need of high capacity loops

⁴⁵ *Id.*

⁴⁶ Butler Aff., ¶ 8.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Weikle Aff., ¶ 5-6.

are located. Significantly, these claims – and the ability of CLECs to extend the reach of their existing networks – are based in no small measure on the availability of leased ILEC facilities, including high capacity UNE loops.⁵⁰

Moreover, the fact that some carriers have implemented self-provisioning does not mean that all can. Even the largest CLECs cannot afford to self-provision high capacity facilities on a wide-scale basis.⁵¹ The Act provides three methods of entry – facilities, UNEs and resale. Each of the members of the CLEC Coalition use a combination of these methods to serve their customers. The Commission should decline the RBOCs' request to foreclose UNEs as a method of entry for CLECs seeking to serve business customers – large, medium and small. Presently, for many CLECs, it is the only economically viable means of entry available.

Finally, wireless high capacity loops do not offer any one of the members of the CLEC Coalition an alternative – let alone a ubiquitously available one – to high capacity UNE loops. WinStar and Teligent, for example, have expensive wireless licenses that cannot be readily duplicated.⁵² None of the members of the CLEC Coalition have the licenses necessary to provision high capacity services over wireless loops. Thus, even assuming that the cost, quality and timeliness with which wireless DS-1, DS-3 and OCn loops could be provisioned approximates those of RBOC high capacity UNE loops, spectrum licensing issues assure that such alternatives are not currently available on a ubiquitous basis.

⁵⁰ See, e.g., Weikle Aff., at 4 (CTC Exchange uses UNEs and other facilities to provide its services); Butler Aff., at 5 (NuVox uses UNE loops and transport to extend the reach of its facilities); Duke Aff., at 6 (KMC uses UNE loops to extend the reach of its fiber rings); Markel Aff., at 6-7 (Cbeyond uses UNE loops and transport to connect its facilities and customers).

⁵¹ See AT&T Reply Comments, at 29-36.

⁵² Both WinStar and Teligent recently declared bankruptcy.

2. The RBOCs Fail to Demonstrate that Self-Provisioning of High Capacity Loops – or Obtaining them from Third-Party Providers – Can Be Accomplished at a Cost and With the Timeliness of UNE Loops

The Commission's *UNE Remand* determination that "[b]uilding out any loop is expensive and time consuming, regardless of its capacity"⁵³ remains no less true today than it was then. As the Commission correctly observed then, it remains the case today that "it is extremely difficult for competitive LECs to overbuild the ubiquitous loop plant that the incumbents have built up over decades, even to serve businesses in urban districts."⁵⁴ The cost and availability of capital have made this even more difficult in recent months. In response to the current capital crunch, many CLECs have slashed or cancelled capital expenditures for the foreseeable future. Facilities-based carriers today must make these economic decisions in order to ensure survival.

The RBOCs present no evidence that should compel the Commission to reverse its *UNE Remand* holdings. For example, the RBOCs assert that it costs "about \$30,000 for a one mile loop" and, on that basis, conclude that the costs of building links from an existing ring are "manageable".⁵⁵ The RBOCs apparently base this cost estimate on estimates of Bell Atlantic's costs (made by Bell employees).⁵⁶ Beyond being of questionable accuracy, the RBOC cost estimate is of questionable relevance. It is not clear that the estimate is for a DS-1, DS-3 or OCn loop. Given the lack of description provided, it is more than likely that the cost estimate provided is not for a high capacity loop at all. The RBOCs also make no attempt to assess CLEC costs,

⁵³ *UNE Remand Order*, ¶ 184.

⁵⁴ *Id.*, ¶ 185; *see also* Duke Aff., ¶ 7.

⁵⁵ RBOC Petition, at 14.

including the substantially higher costs of capital and municipal franchise/right-of-way/permitting costs CLECs must pay. They also ignore the fact that CLECs are not likely to be able to command vendor discounts on par with Verizon or the other giant ILECs. Thus, although the RBOCs should be commended for realizing that supplying cost figures actually would be useful in investigating the cost criterion, they have failed to present anything that can be relied upon in terms of accuracy or relevance.

In addition to their flawed cost estimate, the RBOCs also rely on their collection of soundbites to portray that alternatives to high capacity UNE loops are available in a cost-efficient and timely manner. For example, they point to an investment analyst's remarks that a company called NEON can provide connectivity using a process that is "quick and efficient". Although this would be a welcome development, the RBOCs provide no proof that NEON is able to do what the analyst said it could (and at a competitive price and on a ubiquitous basis). Indeed, and in spite of however much the CLEC Coalition wishes NEON and others will develop into robust wholesale providers, it seems quite likely that NEON is not just yet up to the task of replacing Verizon, SBC and BellSouth UNEs as competitors' primary source of high capacity loops.

The RBOCs find similar support in the remarks of another investment analyst regarding what "a new generation" of "metropolitan bandwidth operators *will* provide".⁵⁷ While this too would be a welcome development, predictions about future performance provide no insight as to whether CLECs would be impaired if high capacity UNEs were eliminated *today*.

⁵⁶ See *id.*, at n.33.

⁵⁷ *Id.*, at 14.

The RBOCs' assertions regarding fixed wireless services also provide little basis upon which to upend the Commission's high capacity loop unbundling requirement. As noted above, licensing/spectrum issues make fixed wireless an alternative only for a limited few. Moreover, the RBOCs' assertion that fixed wireless networks are as widespread as the ILECs' own wireline networks is just plain wrong.⁵⁸ Even if it were true, the RBOCs provide no evidence that those fixed wireless providers have created robust wholesale offerings capable of competing with ILEC UNEs (or even special access). Thus, the RBOCs' unsupported contention that "[f]ixed wireless is widely available and can be rapidly deployed to new locations" provides no basis for upending the Commission's unbundling rules.⁵⁹

The RBOCs also fail to address the fact that it also remains the case that "overbuilding the incumbent LECs' loops would embroil the competitor in lengthy rights-of-way disputes, and would require the unnecessary digging up of streets."⁶⁰ Indeed the Commission's *UNE Remand* conclusion that "even if competitors were able to finance the replication of the incumbent's loop plant, construction of new facilities would – at the least – materially delay competitors' ability to bring their services to consumers" remains valid today. This conclusion remains valid because municipal franchise and building access issues remain significant barriers to self-provisioning (as well as to the development of a robust wholesale market).⁶¹

⁵⁸ *Id.*, at 15-16.

⁵⁹ *Id.*, at 16.

⁶⁰ *UNE Remand Order*, ¶ 186.

⁶¹ ALTS has produced an extensive discussion of the difficulties CLECs are experiencing in obtaining rights-of-way from municipalities and landlords. See *Local Competition Policy & the New Economy* (Feb 2, 2001) (available at <http://www.alts.org>).

Thus, although the RBOCs have demonstrated that CLECs successfully have constructed loops in some circumstances (and it is difficult to say that much if any more was demonstrated), it remains true today that “the cost, risk, disruption, and delay of self-provisioning loop plant would, for many customers, foreclose the benefits of competition.”⁶² Moreover, the RBOCs also offer no credible basis on which the Commission should reverse its conclusions that “access to these high-capacity lines is necessary for ubiquitous deployment of high-capacity services” and that “failing to assure access to high capacity loops would impair their ability to provide the services that they seek to offer in broadband service markets”.⁶³

3. The RBOCs Fail to Demonstrate that Third-Party Alternative Sources Are Available at Levels of Quality and With Network Operations Comparable to Those for High Capacity UNE Loops

It is telling that the RBOC Petition has little to say with respect to the quality and network operations components of the Commission’s test for impairment. The CLEC Coalition does not dispute that when CLECs self-provision they generally are able to do so at quality levels at least on par with ILEC UNE alternatives. Moreover, CLECs typically do not encounter network operations issues with loops that are self-provisioned. However, the RBOCs provide no evidence upon which such assessments could be made with respect to third-party provisioned high capacity loops. One reason for the lack of evidence presented by the ILECs is that, to date, there has been very little marketplace activity by third party high capacity loop providers. Members of the CLEC Coalition very much look forward to the development of vibrant wholesale high capacity

⁶² *UNE Remand Order*, ¶ 186.

⁶³ *Id.*, ¶ 187.

loop markets. For now, however, there is no evidence that such a market has developed with robust alternatives to ILEC high capacity UNE loops.⁶⁴

What little the RBOCs offer with respect to these criteria, is (again) of no relevance to the unnecessary debate spawned by their Petition. For example, the RBOCs claim that “[f]ixed wireless loops offer greater capacity and speed than *standard copper loops* with equivalent quality of service.”⁶⁵ In certain instances and in certain RBOC service territories, that may well be true, but none of the high capacity loops targeted by the RBOCs in this proceeding are *standard copper loops*. Thus, the RBOCs’ slight-of-hand offers no evidence of the existence of third party wholesalers of high capacity wireless loops.

C. Facilities-Based CLECs Will Be Impaired Without Unbundled Access to Dedicated Transport

As was the case with respect to high capacity loops, none of the “marketplace developments” cited or make-weight arguments presented in the RBOC Petition demonstrate that the Commission’s *UNE Remand* conclusions with respect to unbundling dedicated transport remain any less valid today than they were when they were adopted. What was true then remains true today: “these facilities are not available, as a practical, economic, and operational matter, such that a requesting carrier’s ability to provide the services it seeks to offer would not be impaired without access to the incumbent’s ubiquitous transmission facilities.”⁶⁶ Indeed, even assuming that additional progress has been made (the RBOCs simply do not make a serious

⁶⁴ Weikle Aff., ¶ 9; Butler Aff., ¶ 8; Markle Aff., ¶ 6.

⁶⁵ RBOC Petition, at 17 (emphasis added).

⁶⁶ *UNE Remand Order*, ¶ 333.

attempt at cataloguing such progress), the attached affidavits of CTC Exchange, NuVox, and Cbeyond demonstrate that much more needs to happen before the wholesale dedicated transport market can be considered robust enough so that CLECs would not be impaired without access to UNE dedicated transport.⁶⁷

Thus, it remains the case that “the competitive transport facilities that currently exist do not interconnect all of an incumbent LEC’s central offices and all interexchange carrier’s [sic] points of presence within an MSA, or even a substantial portion thereof.”⁶⁸ Accordingly, the Commission should not reverse its decision that the Act requires unbundled access to the ILECs’ dedicated transport networks.

1. The RBOCs Fail to Demonstrate that Alternatives to UNE Dedicated Transport Are Available With Ubiquity Comparable to that of Their Own Networks

Once again, the RBOCs rest their case on the argument that the Commission just got it wrong last time and simply did not understand what it was doing when it considered whether alternative sources of dedicated transport were available with ubiquity to match the ILECs’ own networks.⁶⁹ This is not at all convincing. Even less convincing is the RBOCs’ contorted characterization of the relevant sections of the Commission’s *UNE Remand* analysis. There, the Commission did not, as the RBOCs contend, base any conclusion on the ridiculous assumption that *every* ILEC wire center is connected *directly* to every IXC’s POP or that *every* ILEC wire

⁶⁷ Weikle Aff., ¶ 10; Butler Aff., ¶¶ 9-18; Markle Aff., ¶¶ 7-9.

⁶⁸ *UNE Remand Order*, ¶ 333.

⁶⁹ Once again, these arguments are better suited to reconsideration or review proceedings.

center is directly connected to *every* other ILEC wire center.⁷⁰ Instead, the Commission based its analysis on whether competitors would be impaired without unbundled access to the ILECs' ubiquitous existing transport network. Again, the RBOCs' refusal to acknowledge precedent does not provide a basis for overturning it.

Notably, with respect to the "ubiquity" criterion under the impairment analysis, the RBOCs make no attempt to cure the deficiencies cited by the Commission with respect to their last USTA Report. Once again, the RBOCs present a tally of collocations and cite to the Commission's collocation-based standard for special access pricing flexibility.⁷¹ Once again, the Commission should find that the RBOC tallies "do not describe market conditions where requesting carriers would not be impaired without access to unbundled transport."⁷² Moreover, the Commission once again should find that the triggers for special access pricing flexibility⁷³ do not constitute a proxy for the impairment test applicable to unbundling.⁷⁴

Similarly, tallies of CLEC fiber networks and snippets from news reports and various other materials regarding CLEC fiber deployment offer little insight as to whether or not CLECs would be impaired without access to ILEC dedicated transport UNEs. The number of CLEC fiber networks deployed does not constitute a proxy for the existence of a robust wholesale market.

⁷⁰ RBOC Petition, at 18.

⁷¹ In light of some ILECs' refusal to make available co-carrier cross connects to collocated competitors, it is not at all clear what the number of collocations deployed has to do with the development of a robust competitive transport market. Even if competitive alternatives were ubiquitously available, how would CLECs efficiently interconnect with them?

⁷² *UNE Remand Order*, ¶ 341, n.673.

⁷³ It is notable that the RBOCs present no evidence that the grant of pricing flexibility has resulted in decreased prices.

⁷⁴ See *UNE Remand Order*, ¶ 341, n.673.

Indeed, the attached affidavits of Cbeyond, NuVox and CTC Exchange suggest that third-party provisioned alternative transport remains available on only limited point-to-point routes.⁷⁵ Thus, it remains the case that, for ubiquitous coverage, ILEC UNEs represent the only option.

Accordingly, the Commission, once again, should conclude that it is “not persuaded that the incumbents’ data accurately reflects the extent to which alternatives are actually available to competitors.”⁷⁶ As it did in the *UNE Remand Order*, the Commission again must find that “[t]he alternatives cited in the evidence submitted by the incumbents are not ubiquitously available, and therefore competitive transport [is] not available as a practical, economic and operational manner.”⁷⁷

2. The RBOCs Fail to Demonstrate that Self-Provisioning of High Capacity Dedicated Transport – or Obtaining It from Third-Party Providers – Can Be Accomplished at a Cost and With the Timeliness of UNE Dedicated Transport

In the *UNE Remand Order*, the Commission correctly concluded that “replicating the incumbent’s vast and ubiquitous transport network would be prohibitively expensive and would delay competitive entry.”⁷⁸ Nothing has changed in the intervening 12-to-18 months that should cause the Commission to alter this conclusion. Self-provisioning dedicated transport still requires CLECs “to incur significant direct and other costs, including the costs of fiber, the costs of deploying fiber in public rights of way, trenching and the cost of purchasing and collocating the

⁷⁵ Weikle Aff., ¶ 10; Butler Aff., ¶¶ 9-18; Markle Aff., ¶¶ 7-9.

⁷⁶ *UNE Remand Order*, ¶ 341.

⁷⁷ *Id.*, ¶ 340.

⁷⁸ *Id.*, ¶ 355.

necessary equipment.”⁷⁹ Indeed, each of these costs are compounded by the capital crunch which the CLEC industry faces. Moreover, as noted above, (1) CLECs cannot command the same discounts as ILECs do from their vendors, and (2) CLEC costs associated with municipal franchises/permits/rights-of-way typically far outstrip those imposed on the ILECs. The delay associated with each of these hurdles to self-provisioning are avoided with ILEC UNEs.

Notably, the RBOCs say nothing about the actual costs of third-party alternatives or the timeliness with which they are available. In a robust wholesale market, one would expect that the costs would approximate UNE costs and the provisioning intervals would approximate special access. The RBOCs, however, offer no such proof. Instead, they merely repeat their contention that the Commission got it wrong last time and argue that, *because CLECs really only need to compete in a few central offices*,⁸⁰ transport alternatives need not be available to match those that otherwise could be purchased as UNEs. This argument is plainly without merit. There is no evidence that Section 251 was crafted to limit competition to certain densely developed pockets of large metropolitan areas.

3. The RBOCs Fail to Demonstrate that Third-Party Alternative Sources Are Available at Levels of Quality and With Network Operations Comparable to Those for UNE Dedicated Transport

The RBOC Petition provides no evidentiary basis upon which the Commission should reverse its *UNE Remand* conclusion that “requiring requesting carriers to utilize a patchwork of competitive alternatives, to the extent they are available . . . can result in a material degradation of

⁷⁹ *Id.*, ¶ 356.

⁸⁰ This appears to be the gist of the RBOCs’ infatuation with the high concentration of their own special access revenues in a relatively small percentage of their wire centers.

quality”⁸¹ Likewise, the RBOCs proffer no evidence to suggest that the Commission’s *UNE Remand* conclusion that “requiring carriers to utilize alternative sources of transport imposes functional and quality disadvantages that materially diminish a requesting carrier’s opportunity to provide services it seeks to offer” no longer remains valid.⁸²

Instead, the RBOCs contend that the “record” (assembled by the RBOCs) “makes clear” that “[t]here are sufficient, and sufficiently ubiquitous, transport alternatives today that a requesting carrier can use a single competing provider to supply all of its needs.”⁸³ This statement, however, lacks any credibility. The “record” assembled by the ILECs makes no such showing. Lists of competitors, fiber rings and collocations do not constitute proxies for a robust competitive market that must exist prior to eliminating unbundling requirements. In fact, they say very little at all about the actual availability of wholesale alternatives to ILEC dedicated transport UNEs.

The affidavits prepared by NuVox and Cbeyond confirm that the RBOCs’ contention is in fact false.⁸⁴ Indeed, the “marketplace experience” of the members of the CLEC Coalition prove that there is no one provider – in any market – that can offer ubiquitous alternatives to ILEC UNE transport (let alone at efficient prices). In the absence of ILEC UNEs, CLECs would not only

⁸¹ *UNE Remand Order*, ¶ 365.

⁸² *Id.*, ¶ 356.

⁸³ RBOC Petition, at 28.

⁸⁴ Weikle Aff., ¶ 10; Butler Aff., ¶¶ 9-18; Markle Aff., ¶¶ 7-9.

face the disadvantage of having to coordinate with multiple providers, they also would have to address multiple gaps in their networks due to the fact that often alternatives are not available.⁸⁵

III. UNBUNDLING FACILITATES COMPETITIVE ENTRY AND INVESTMENT BY FACILITIES-BASED CARRIERS

The ILECs continue to place undue reliance on claims that “too much” unbundling “would deter facilities-based competition and investment in broadband facilities”.⁸⁶ The fact that the facilities-based competitor members of the CLEC Coalition have banded together to oppose the RBOC Petition strongly suggests otherwise. Indeed, by incorporating UNEs into their business plans, the facilities-based members of the CLEC Coalition have been able to efficiently (in many cases) extend the reach of their networks. Today they bring more bandwidth capable of supporting advanced services to customers whose needs previously were under-served by the ILECs. The fact that facilities-based CLECs have made some of the strongest gains in the sub-market for ISP customers proves the point.

Data available in the Commission’s latest report on local telephone competition also proves the point that unbundling facilitates facilities-based competition and the deployment of facilities capable of delivering advanced services.⁸⁷ Indeed, it is no coincidence that the Commission found that in states where an RBOC has been awarded interLATA authority under

⁸⁵ Those gaps most likely would be addressed by ordering ILEC special access. As noted above, there is no public policy benefit in driving CLEC costs up via forced reliance on ILEC special access.

⁸⁶ RBOC Petition, at 29-32.

⁸⁷ FCC Releases Latest Data on Local Telephone Competition, News Release, at 1 (May 21, 2001) (“Local Competition Data Release”); Local Telephone Competition: Status as of December 31, 2000, CCB Industry Analysis Division Report (rel. May 21, 2001) (“Local Competition Data Report”).

Section 271, competitive activity was the greatest.⁸⁸ For example, in New York and Texas, where the Commission has found that unbundling rules generally have been enforced and pricing generally has been set in a manner that comports with the Commission's TELRIC pricing rules, CLEC market share has risen dramatically.⁸⁹ In those states, and across the country, CLEC use of UNE loops also has increased dramatically.⁹⁰

Thus, the facts do not support the RBOCs' misguided policy-based arguments for re-writing the Act. The unlawful gutting of Section 251 requested by the RBOCs – by either eliminating unbundling obligations or restricting access to UNEs – will do nothing but increase RBOC (CLEC and consumer) dependence on special access. Fostering such a wealth transfer to the incumbents would serve no discernable public policy goal. Moreover, contrary to the RBOCs' now tired contentions, it would be antithetical to the Section 706 mandate of facilitating the deployment of advanced services. Full implementation of Section 251 serves the goal identified in Section 706. Indeed, Section 706 suggests that high capacity UNEs must remain available and the Commission must take additional measures to ensure that they are made available on a timely, reliable and cost-efficient basis.

In sum, high capacity loop and transport unbundling requirements do not deter additional deployment of the high capacity loops and transport necessary to facilitate the delivery of advanced services – instead, they maximize the number of end users having access to these facilities. The RBOCs offer only rhetoric and no real discussion of why these particular

⁸⁸ Local Competition Data Release, at 1.

⁸⁹ *Id.*

⁹⁰ *Id.*, at 2 (UNE loop use up 62 percent in second half of 2000).

unbundling requirements inhibit investment and deployment. Once again, the Commission should reject RBOC attempts to harm consumers and competitors by forcing “too much” reliance on ILEC special access.

IV. ADDITIONAL FEDERAL GUIDELINES ARE NEEDED TO ENSURE RBOC COMPLIANCE WITH THE COMMISSION’S UNBUNDLING RULES

Although the CLEC Coalition believes that the RBOC Petition is untimely filed and procedurally flawed, the Commission strongly should consider taking additional pro-competitive action, should it choose to respond to the petition by issuing a notice of proposed rulemaking. Indeed, there are several measures the Commission could adopt to ensure greater compliance with and easier enforcement of its own rules. Such steps also would be consistent with the Section 706 mandate requiring the Commission to facilitate the deployment of advanced services. Included in the tools the Commission may wish to consider adopting are:

- National guidelines for presumptively reasonable UNE provisioning intervals – including an FCC audit/review mechanism for reviewing ILEC claims that performance at longer intervals is defensible;
- National guidelines for presumptively reasonable UNE pricing levels – including an FCC audit/review mechanism for reviewing ILEC claims that prices in excess of the guidelines are defensible;⁹¹
- National guidelines for an ILEC performance assurance plan – including the requirement that ILECs must agree to include a plan that comports with the national standard in their interconnection agreements with CLECs; and
- Proactive FCC compliance/audit review team and ombudsman to promote greater compliance with the Commission’s rules and quick resolution of disputes

⁹¹ Recognizing that all state commissions may not have equal resources, the Commission may choose rates from particular states as benchmarks for various ILEC serving territories. For example, New York’s recently adopted second generation of UNE rates could serve as the presumptively reasonable benchmark for the entire Verizon service territory.

attributable to the imbalance of bargaining power enjoyed by BellSouth, Verizon, SBC and the other ILECs.

Each of these measures would promote facilities-based competition, the deployment of advanced services, and the greater public interest. Consumers benefit from more competition and not from more ILEC special access profits. In fact, should the Commission decide to entertain (and not dismiss) the RBOC Petition, the CLEC Coalition respectfully requests that the Commission request comment on each of these mechanisms designed to facilitate compliance and enforcement of the Commission's unbundling rules.

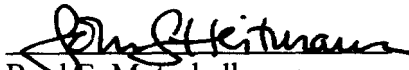
CONCLUSION

For all of the foregoing reasons, the Commission should deny the RBOC Petition on grounds that it is untimely, procedurally defective, and that it does not otherwise provide an evidentiary basis upon which the Commission should reverse its rules or repeal sections of the 1996 Act.

Respectfully submitted,

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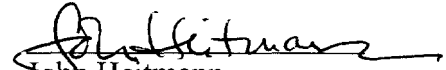

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CERTIFICATE OF SERVICE
CC Docket No. 96-98

I, John Heitmann, hereby certify that copies of the foregoing Joint Comments were served on June 11, 2001 via carrier on the following persons.


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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
Of 1996)	
)	
Joint Petition of BellSouth, SBC, and Verizon)	
For Elimination of Mandatory Unbundling of)	
High-Capacity Loops and Dedicated Transport)	

AFFIDAVIT OF JERRY L. WEIKLE

I, Jerry L. Weikle, pursuant to 28 U.S.C. Sec. 1746, do hereby declare, under penalty of perjury, that the following is true and correct:

1. I am Director – External Affairs for CTC Exchange Services, Inc. (“CTC Exchange”).
2. My business address is 68 Cabarrus Avenue E, PO Box 227, Concord, North Carolina 28026-0227.
3. CTC Exchange is a competitive local exchange carrier certificated to offer local service in North Carolina, South Carolina, and Georgia. CTC Exchange is a wholly owned subsidiary of CT Communications, Inc. The largest subsidiary of CT Communications, Inc. is The Concord Telephone Company, a rural, mid-size local exchange carrier operating in North Carolina since 1897.
4. CTC Exchange uses a combination of resale, UNEs, and other facilities to provide competitive local services to customers in North Carolina and Georgia. CTC Exchange currently has interconnection agreements with BellSouth, Verizon, Sprint, Concord Telephone, and Alltel. Many of the areas CTC Exchange serves have been ignored by

other CLECs in lower population areas such as Newton, Shelby, Davidson, Huntersville, and Monroe in North Carolina. In addition, CTC Exchange also serves customers in higher population areas such as parts of Charlotte and Raleigh, North Carolina and Lawrenceville, Georgia.

5. The purpose of this Affidavit is to detail the problems associated with granting the Petition filed by BellSouth, SBC and Verizon (together the “Joint Petitioners”) for elimination of mandatory unbundling of high-capacity loops and dedicated transport.
6. CTC Exchange relies on facilities of the respective underlying ILEC to provide service to many of our customers. Specifically, the availability of high-capacity loops and interoffice transport is critical to the provision of economically competitive local services in smaller markets. Only in limited areas has CTC Exchange ventured to place our own facilities because the volumes of customers needed to justify the cost will not be achieved for several years. Even in these limited areas, there is often a reliance on the ILEC for the high capacity facilities.
7. When dedicated transport facilities are available from alternative providers, CTC Exchange will often utilize these either in our service areas or to link service areas together.
8. When alternative facilities are not available, CTC Exchange is forced to obtain high capacity loops and dedicated transport from the underlying ILEC in order to serve customers that seek a competitor to the existing monopoly service provider at a competitive price.

9. As a practical matter, CTC Exchange does not have many, if even any, economically sound alternatives to the ILEC for high-capacity loops in smaller markets. CTC Exchange serves smaller business customers that are often located in these smaller cities.
10. Similarly, with regard to high-capacity dedicated transport, CTC Exchange does not always have a competitive alternative to the ILEC. While there are several high-capacity transport providers in the states of North Carolina and Georgia, their networks are not necessarily located so as to provide an alternative to the ILEC in the areas CTC Exchange requires them.
11. In summary, CTC Exchange does not often have economically viable competitive alternatives available for high-capacity loops in the smaller cities where service is provided. In addition, CTC Exchange does not always have economically viable competitive alternatives available for dedicated transport to connect its serving areas together. Finally CTC Exchange does not expect to obtain the volume of customers needed to build these facilities ourselves for several more years, if ever in some areas. Granting the Joint Petitioners Petition would have a devastating impact on CTC Exchange's ability to offer competitive services in the local exchange market.
12. This concludes my Affidavit.